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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 STEPHEN T. MUGGLEBEE, an  
12 individual,  
13 Plaintiff,  
14 v.  
15 ALLSTATE INSURANCE COMPANY,  
16 and DOES 1 thru 25, inclusive,  
17 Defendants.

Case No.: 14-CV-2474 JLS (JMA)

**ORDER GRANTING PLAINTIFF'S  
UNOPPOSED MOTION FOR  
APPROVAL OF SETTLEMENT**

(ECF No. 76)

18 Presently before the Court is Plaintiff Stephen T. Mugglebee's, through his guardian  
19 *ad litem*, Unopposed Motion for Order Approving Settlement. (ECF No. 76.) Plaintiff  
20 seeks an order approving the proposed settlement and approving various fees and costs.  
21 ("MTN," ECF No. 76-1, at 10.) The Court took the matter under submission without oral  
22 argument pursuant to Civil Local Rule 7.1(d)(1). Having considered Plaintiff's unopposed  
23 Motion and the law, the Court **GRANTS** the Motion, (ECF No. 76).

24 **BACKGROUND**

25 This cases arises from an insurance claim by Plaintiff against Defendant Allstate  
26 Insurance Company. (MTN 2.) On January 23, 2013, a water line burst in Plaintiff's house  
27 causing extensive damage to both the home itself and personal property within the home.  
28 (*Id.*) The water damage left the home uninhabitable. Disputes between Plaintiff and his

1 insurance company arose, resulting in Plaintiff filing suit in California Superior Court  
2 alleging mishandling of the claim. (*Id.*) Estimates for the cost of repair ranged from  
3 \$70,000 to \$150,000, which the parties disputed. (*Id.*) During the dispute, Allstate made  
4 a number of payments under the policy totaling \$68,338.65. (*Id.* at 2 n.1). The matter was  
5 removed from state to federal court on October 17, 2014. (ECF No. 1.)

6 On March 28, 2016, Plaintiff filed his Second Amended Complaint, (ECF No. 48),  
7 and as the parties were preparing for discovery, Plaintiff suffered a series of debilitating  
8 strokes. (*Id.* at 3.) On March 21, 2017, the Court approved appointment of a guardian *ad*  
9 *litem*. (ECF No. 65.) The parties entered into private mediation and on May 25, 2017, the  
10 parties settled. (MTN. 3.) On August 28, 2017, the subject property was sold and all liens  
11 and outstanding mortgage debt on the property were satisfied. (*Id.* at 6; *see also* Ex. F,  
12 ECF No. 76-3 (containing the Substitution of Trustee and Full Reconveyance and Grant  
13 Deed).)

14 The terms of the Settlement Agreement, (*see* Ex. A, ECF No. 76-3), are as follows.  
15 Defendant Allstate shall pay Plaintiff \$170,000.00 over and above amounts previously  
16 paid, on or before thirty (30) days after this Court approves the settlement and satisfaction  
17 of all liens. (MTN 3.) Payment will be made to Winters & Associates' Client Trust  
18 Account and any lienholders whose liens have not been released. (*Id.* at 4.) The settlement  
19 fully discharges all of Plaintiff's claims and causes of action and includes an express waiver  
20 of California Civil Code § 1542. (*Id.*)

21 Additionally, Plaintiff's counsel requests the Court approve attorney's fees in the  
22 amount of \$51,395.00. (*Id.* at 7.) Plaintiff's counsel entered into a written fee agreement  
23 with Plaintiff providing for payments by Plaintiff on a regular basis. (*Id.*) However, after  
24 Plaintiff's stroke, Plaintiff's counsel has received no payments since March 28, 2016. (*Id.*)  
25 Plaintiff's Guardian *Ad Litem* has reviewed the requested fee and found it reasonable. (*Id.*)  
26 Plaintiff's attorney requests remaining litigation costs in the sum of \$3,697.00 (this is the  
27 net remaining cost; total litigation costs incurred were \$17,127.00, of which \$13,430 has  
28 already been paid). (*Id.* at 9; *see also* Ex. J, ECF No. 76-3.) Plaintiff owes \$2,937.50 to

1 Steve Hill Construction Consulting, Inc. for estimates for home repairs. (MTN 9.) Finally,  
2 Plaintiff requests that his Guardian *Ad Litem* receive reimbursement for costs in the amount  
3 of \$4,275.00. (*Id.*)

#### 4 **LEGAL STANDARD**

5 District courts have a special duty to protect the interests of litigants who are  
6 incompetent. *See* Fed. R. Civ. P. 17(c); *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th  
7 Cir. 2011). Rule 17(c) requires a district court to appoint a guardian *ad litem* to protect an  
8 incompetent person who is unrepresented in an action. Fed. R. Civ. P. 17(c). In the context  
9 of guardians for minors, the Ninth Circuit has instructed district courts to “conduct [their]  
10 own inquiry to determine whether the settlement serves the best interests of the minor.”  
11 *Robidoux*, 638 F.3d at 1181 (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir.  
12 1978); *see also* *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983) (holding  
13 that “a court must independently investigate and evaluate any compromise or settlement of  
14 a minor’s claims to assure itself that the minor’s interests are protected, even if the  
15 settlement has been recommended or negotiated by the minor’s parent or guardian ad  
16 litem”). District courts have applied the *Robidoux* inquiry to cases involving settlement  
17 approval for incompetent persons. *See, e.g., Smith v. City of Stockton*, 185 F. Supp. 3d  
18 1242, 1243 (E.D. Cal. 2016).

19 District courts must limit their scope of review to whether the net amount distributed  
20 to each plaintiff is fair and reasonable, in light of the facts of the case, the plaintiff’s specific  
21 claim, and recovery in similar cases. *Robidoux*, 638 F.3d at 1181–82. Courts should not  
22 evaluate the fairness of the recovery by comparing the incompetent person’s proportion of  
23 total settlement value to the amount designated for competent co-plaintiffs or plaintiff’s  
24 counsel. *Id.* at 1182. “So long as the net recovery to each minor [or incompetent] plaintiff  
25 is fair and reasonable in light of their claims and average recovery in similar cases, the  
26 district court should approve the settlement as proposed by the parties.” *Id.*

27 The *Robidoux* court expressly limited its holding to a minor’s federal claims and did  
28 “not express a view on the proper approach for a federal court to use when sitting in

1 diversity and approving the settlement of a minor's [or incompetent's] state law claims.”  
2 *Id.* at 1179 n.2. District courts, however, have found *Robidoux* applicable in state law  
3 claims. *See Mitchell v. Riverstone Residential Grp.*, 2013 WL 1680641, at \*1 (E.D. Cal.  
4 Apr. 17, 2013) (collecting cases).

## 5 ANALYSIS

### 6 I. Plaintiff's Net Recovery

7 Plaintiff's proposed settlement amount is \$170,000. Total costs and fees are  
8 \$62,304.50 (\$51,395 attorney's fees + \$3,697 litigation costs + \$2,937.50 construction  
9 estimate + \$4,275 guardian *ad litem* costs). Plaintiff's net amount from the settlement is  
10 \$107,695.50 (\$170,000.00 – \$62,304.50). Allstate Insurance previously paid \$68,338.65  
11 on the undisputed portion of the loss. Thus, Plaintiff's total net recovery from Defendant  
12 will be \$176,034.15 (\$107,695.50 + 68,338.65).

13 The cost estimates for Plaintiff's property damage ranged from \$70,000  
14 (Defendant's estimate) to \$150,000 (Plaintiff's estimate). (MTN 2.) Thus, if the Court  
15 assumes that the largest cost estimate is true—\$150,000—Plaintiff's total recovery exceeds  
16 this sum. That is, Plaintiff's settlement amount (\$107,695.50) and the amount Allstate  
17 previously paid (\$68,338.65) exceed the cost estimate by \$26,034.15 (\$176,034.15  
18 received by Plaintiff – \$150,000 cost of damage). This recovery excludes attorney's fees  
19 and costs. Furthermore, Plaintiff's mortgage was retired from the proceeds of the sale of  
20 the property, which means there appear to be no hidden costs that would further reduce the  
21 amount owing to Plaintiff.

22 As required by *Robidoux*, 638 F.3d at 1181, the Court must consider the outcomes  
23 of similar cases to determine if the proposed settlement is reasonable. After extensive  
24 search, the Court cannot find any case in this circuit, or even nationally, that closely  
25 resembles the factual scenario presented here. For their part, the parties have not directed  
26 the Court to any similar cases. Accordingly, the Court endeavors to find similarities in the  
27 case law and uses its reasoned judgment where appropriate. As an initial matter, there are  
28 two critically important facts that undergird the Court's analysis. First, all parties agree to

1 the settlement terms, which was negotiated through arm's length private mediation.  
2 Second, Plaintiff will recover more from the settlement than the highest property damage  
3 assessment.

4 Plaintiff brought breach of contract claims. (*See* ECF No. 1-2.) He alleged that his  
5 insurance policy provided "Dwelling Protection" up to a limit of \$511,342 and "Personal  
6 Property Protection" up to \$383,507. (*Id.* ¶ 6.) The policy covered Plaintiff's dwelling  
7 and personal property on a replacement cost basis, which means that Plaintiff would be  
8 entitled to recover the full cost to repair, rebuild, or replace the damaged covered property.  
9 (*Id.*) The policy also provided additional protection including "additional living expense"  
10 for increases in Plaintiff's living expenses while the residence was uninhabitable. (*Id.* ¶ 7.)

11 In *Chance v. Prudential Insurance Co. of America*, No. 15-cv-1889-DAD-JLT, 2016  
12 WL 3538345, at \*2 (E.D. Cal. June 29, 2016), the district court examined whether a  
13 proposed settlement agreement was in a minor's best interest. There, the plaintiff filed suit  
14 for breach of contract against an insurance company arising from a dispute as to whether  
15 benefits from a life insurance policy would be paid to the surviving spouse (the plaintiff)  
16 or to the decedent's three surviving children. *Id.* at \*1. The parties, including the  
17 spouse/plaintiff, settled and agreed that the death benefit would be paid to each of the three  
18 surviving children, but not to the surviving spouse. *Id.* at \*2. The district court found:

19 [T]he proposed settlement agreement provides that defendant . . .  
20 will pay each of [the decedent's] surviving children a one-third  
21 share of the death benefits under the life insurance policy at issue.  
22 Thus, each minor will receive an *amount similar to that to which*  
23 *she would likely be entitled as a beneficiary under the plan*, in  
the absence of a qualified surviving spouse or registered  
domestic partner.

24 *Id.* (emphasis added). The district court concluded that the proposed settlement was fair  
25 and reasonable. *Id.*

26 The facts in the present case are obviously distinguishable—*Chance* dealt with a life  
27 insurance policy and Plaintiff's claim arises out of a dwelling and personal property policy.  
28 However, the Court finds persuasive the *Chance* court's reasoning that each minor would

1 be entitled to an amount similar to that which she would be entitled as a beneficiary under  
2 the plan. Here, the proposed settlement will compensate Plaintiff for all damages to real  
3 property and exceed the highest cost estimate by \$26,034.15. Thus, not only is Plaintiff  
4 receiving what he would be entitled to under his insurance policy, but he will receive an  
5 additional sum above and beyond the policy.<sup>1</sup>

6 Accordingly, the Court finds the proposed settlement to be fair and reasonable.

## 7 **II. Attorney's Fees**

8 The *Robidoux* court held that district courts should not place undue emphasis on the  
9 amount of attorney's fees when determining the plaintiff's recovery under a proposed  
10 settlement. 638 F.3d at 1181–82. This Court determined that the proposed settlement was  
11 fair and reasonable, without reference to attorney's fees (except to determine Plaintiff's net  
12 recovery). The *Robidoux* court did not mandate a specific standard to evaluate the  
13 reasonableness of attorney's fees. Civil Local Rule 17.1.b.1 requires that any money  
14 recovered by an incompetent California resident by settlement must be paid and disbursed  
15 in accordance with California Probate Code section 3600, *et seq.* In turn, California  
16 Probate Code section 3601 authorizes a court to direct that reasonable guardian expenses,  
17 costs, and attorney's fees be paid from the money to be delivered for the benefit of the  
18 person with a disability. *See also Goldberg v. Sup. Court*, 23 Cal. App. 4th 1378 (Ct. App.  
19 1994) (noting that § 3601 “bestows broad power on the court to authorize payment from  
20 the settlement-to say who and what will be paid from the [incompetent person's] money—  
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23 <sup>1</sup> The Court notes that Plaintiff's Second Amended Complaint requested a higher amount in damages than  
24 what Plaintiff will recover by the proposed settlement. (*See* ECF No. 48, at 25–26 (requesting \$300,000  
25 in compensatory, incidental, and consequential damages as well as additional sums in punitive damages  
26 and attorney's fees).) However, an amount offered in settlement incorporates the uncertainties of going  
27 to trial and proving all elements. For example, in the context of the approval of a class action settlement,  
28 the Ninth Circuit affirmed a district court's finding of one-sixth of potential recovery as fair and adequate.  
*In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000), *as amended* (June 19, 2000); *see also Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982) (“It is well-settled law  
that a cash settlement amounting to only a fraction of the potential recovery does not per se render the  
settlement inadequate or unfair.”). Therefore, the fact that Plaintiff's recovery here will be a fraction of  
his requested recovery does not render this settlement inadequate or unfair.

1 as well as direct certain individuals to pay it”). Because the Civil Local Rules direct the  
2 Court to California statute, the Court applies California law to evaluate the reasonableness  
3 of attorney’s fees, guardian expenses, and other costs.

4 When a lawyer represents an incompetent person and recovers funds by way of  
5 settlement, California law requires a court to inquire into the reasonableness of attorney’s  
6 fees and costs. *Ojeda v. Sharp Cabrillo Hosp.*, 8 Cal. App. 4th 1, 17 (Ct. App. 1992) (citing  
7 Cal. Prob. Code §§ 3600–01). “Under California law, an insurer who wrongly refuses to  
8 pay a claim must compensate the insured for all damages caused by the refusal. When that  
9 refusal forces the insured to litigate when he ought not to have been required to go to court,  
10 necessary and reasonable counsel fees are part of his compensatory damages.” *Biundo v.*  
11 *Old Equity Life Ins. Co.*, 662 F.2d 1297, 1299 (9th Cir. 1981) (citing, e.g., *Mustachio v.*  
12 *Ohio Farmers Insurance Co.*, 44 Cal. App. 3d 358, 364 (1975)). “However, recovery of  
13 counsel fees may not exceed the amount attributable to the attorney’s efforts to obtain the  
14 rejected payment due on the insurance contract.” *Id.*

15 Plaintiff’s counsel requests fees in the amount of \$51,395.00. (MTN 7.) In total,  
16 Plaintiff’s counsel, Mr. Winters, spent 103.6 hours and his associates spent 54.5 hours.

17 “The determination of reasonable attorney fees is committed to the sound discretion  
18 of the trial court.” *Olson v. Cohen*, 106 Cal. App. 4th 1209, 1217 (Ct. App. 2003). The  
19 inquiry into reasonable attorney fees begins with the ‘lodestar,’ which is “the number of  
20 hours reasonably expended multiplied by the reasonable hourly rate.” *PLCM Grp., Inc. v.*  
21 *Drexler*, 22 Cal. 4th 1084, 1095 (2000). “The reasonable hourly rate is that prevailing in  
22 the community for similar work.” *Id.* The factors the court should consider to determine  
23 whether or not the attorney fees are reasonable are: the nature of the litigation, the amount  
24 involved in the litigation, the skill employed in handling the litigation, the attention given,  
25 the success of the attorney’s efforts, the attorney’s learning and experience, the intricacies  
26 and importance of the litigation, the labor necessary, and the time consumed. *Olson*, 106  
27 Cal. App. 4th at 1217.

28 Here, Mr. Winters’ usual hourly rate is \$650, but he agreed to charge \$500 per hour

1 for his time; he also charged \$350 per hour for his associates' time, and \$65 an hour for  
2 paralegal time. (MTN 7.) Defendant does not oppose Mr. Winters' hourly rate. "In the  
3 absence of opposing evidence, the proposed rates are presumed reasonable." *Velez v.*  
4 *Wynne*, 220 Fed. App'x 512, 515 (9th Cir. 2007) (quoting *Cortes v. Metro Life Ins. Co.*,  
5 380 F. Supp. 2d 1125, 1129 (C.D. Cal. 2005)). The Court thus presumes the rates are  
6 reasonable at the start. Plaintiff is an attorney and approved the rates before he suffered  
7 from his current afflictions; thus, he had some familiarity with reasonable rates in the San  
8 Diego, California market. (MTN 8.) Additionally, Guardian *Ad Litem* Kenneth J. Gerard  
9 has reviewed these fees and finds them reasonable. (*Id.* at 7 (citing Declaration of Kenneth  
10 J. Gerard, ECF No. 76-4, ¶ 3).) Accordingly, the Court finds Mr. Winters' hourly rate, as  
11 well as his associates' and paralegals' time to be reasonable.

12 Next, the Court must determine the number of compensable hours Mr. Winters and  
13 his staff reasonably expended representing Plaintiff. "The fee applicant bears the burden  
14 of documenting the appropriate hours expended in the litigation and must submit evidence  
15 in support of those hours worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir.  
16 1992) (citing *Hensley v. Eckerhart*, 461 U.S. 424 433, 437(1983)). The Court "should  
17 exclude from [the] initial fee calculation hours that were not 'reasonably expended.'" *Hensley*,  
18 461 U.S. at 434. Hours are not "reasonably expended" if they are "excessive,  
19 redundant, or otherwise unnecessary." *Id.*

20 The Court has reviewed Mr. Winters' and his associates and staff billing records and  
21 finds them reasonable. There is no evidence of block billing or excessive or redundant  
22 charges. (*See* Ex. J, ECF No. 76-3, at 26–32.) The Court calculates the lodestar for each  
23 attorney and staff as follows:

- 24 • Winters: 103.6<sup>2</sup> hours x \$500 = \$51,800
- 25 • Capielo: 3.3 hours x \$350 = \$1,155

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27 <sup>2</sup> The billing entries submitted by Plaintiff's counsel listed Mr. Winter's hours as 101 hours total. (ECF  
28 No. 76-3, at 30.) This appears to be an error. A proper accounting of all listed hours yields 103.6 hours,  
which multiplied by \$500 results in the \$51,800 that Plaintiff's counsel billed.

- Ball: 51.2<sup>3</sup> hours x \$350 = \$17,920
- Paralegal: 8 hours x \$65 = \$520

The Court does not adjust the lodestar amount. The Court finds the attorney's fees to be fair and reasonable and **AWARDS** \$51,395.00 to Winters and Associates.

### **III. Other Costs and Expenses**

#### ***A. Litigation Costs***

Plaintiff's counsel requests \$3,697.00 for costs owed to Winters and Associates. (MTN 9.) The litigation costs incurred in the matter total \$17,127.00. (*Id.*) Plaintiff previously paid \$12,500.00 for costs and the remaining retainer of Expert Dan Jacobson was credited to the account in the amount of \$930.00. (*Id.*) Plaintiff's counsel also request \$2,937.50 for costs owed to Steve Hill Construction Consulting, Inc., for estimating repairs. (*Id.*)

Reasonable expenses and court costs to be paid out of the settlement also must be approved by the court. Cal. Prob. Code § 3601. The Court finds the remaining costs to be reasonable.

#### ***B. Guardian Ad Litem Costs***

Plaintiff's counsel requests that the services of Kenneth J. Gerard be reimbursed in the amount of \$4,275.00. (MTN 9.) California Code of Civil Procedure section 373.5 provides "[t]he reasonable expenses of the guardian ad litem, including compensation and counsel fees, shall be determined by the court and paid as it may order, either out of the property or by plaintiff or petitioner." The Court has reviewed the guardian *ad litem*'s costs and finds them to be reasonable.

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<sup>3</sup> The billing entries submitted by Plaintiff's counsel listed Attorney Ball's hours as 50.5 hours total. (ECF No. 76-3, at 31.) This also appears to be an error. A proper accounting of all listed hours yields 51.2 hours, which multiplied by \$350 results in the \$17,920 that Plaintiff's counsel billed.

1 **CONCLUSION**

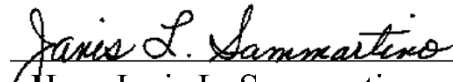
2 In light of the foregoing, the Court **GRANTS** Plaintiff's unopposed Motion, (ECF  
3 No. 76). **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

- 4 1. Plaintiff Stephen Mugglebee is entitled to bring this action and Kenneth J. Gerard,  
5 as Guardian *Ad Litem* is entitled to proceeds of this settlement;  
6 2. All issues raised by this proposed Settlement have been submitted to this Court and  
7 Plaintiff knowingly has waived his right to trial and appeal;  
8 3. The Court approves the settlement amount of \$170,000.00 and approves the  
9 distribution of said amount;  
10 4. The Court approves payment of attorney's fees in the amount of \$51,395.00 and  
11 reimbursement of costs incurred in the amount of \$3,697.00 to Winters &  
12 Associates;  
13 5. The Court approves payment of guardian *ad litem* fees in the amount of \$4,275.00  
14 to Kenneth J. Gerard; and  
15 6. The Court approves payment of fees and costs in the amount of \$2,937.50 to Steve  
16 Hill Construction Consulting, Inc.

17 This Order concludes litigation in this matter. The Clerk **SHALL** close the file.

18 **IT IS SO ORDERED.**

19 Dated: March 21, 2018

20   
21 Hon. Janis L. Sammartino  
22 United States District Judge  
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